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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 663,914	09 18 2000	Adelmo Monsalve-Gonzalez	5346	4221

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EXAMINER
TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
1761	8

DATE MAILED: 04 09 2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/663,914	Gonzalez et al.
Examiner	**Art Unit**
Lien Tran	1761

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) X Responsive to communication(s) filed on *Feb. 19, 2002*.

2a) ___ This action is **FINAL**. 2b) X This action is non-final.

3) ___ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) X Claim(s) *1-42* is/are pending in the application.

4a) Of the above, claim(s) *1-20 and 28-30* is/are withdrawn from consideration.

5) ___ Claim(s) _____ is/are allowed.

6) X Claim(s) *21-27 and 31-42* is/are rejected.

7) ___ Claim(s) _____ is/are objected to.

8) ___ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ___ The specification is objected to by the Examiner.

10) ___ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ___ The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) ___ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ___ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ___ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15 X	Notice of References Cited (PTO-892)	18 ___	Interview Summary (PTO-413) Paper No.s
16 ___	Notice of Draftsperson's Patent Drawing Review (PTO-948)	19 ___	Notice of Informal Patent Application (PTO-152)
17 X	Information Disclosure Statement s (PTO-1449) Paper No.s: *2,3*	20 ___	Other

1. Applicant's election with traverse of Group II claims 21-27 and 31-37 in Paper No. 7 is acknowledged. The traversal is on the ground(s) that it is not an undue burden to search all the inventions, particular Groups II and III. This is not found persuasive because with respect to the invention of Group I. The search for the invention of Group II does not involve the invention of Group I. Thus, undue burden is required to search the invention of Group I together with the invention of Group II. Upon further consideration, the invention of Group III will be examined together with Group II

The requirement is still deemed proper and is therefore made FINAL.

2. Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 31 is vague and indefinite. What does applicant mean by whole wheat flour prepared from peroxide-bleached bran? How can whole wheat flour be prepared from just the bran. Does applicant mean to say whole wheat flour containing bleached bran. On line 2, the flour having an L value of what.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 38-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmidt.

Schmidt disclose a bleached bran product. The bleached bran product is used in food product such as bread, rolls, biscuits, muffins, cereals, snacks, pasta or almost any high fiber food product. The bran is bleached to at least off-white and while. (see columns 6-7)

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 21-27 and 31-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt.

Schmidt discloses a process from removing color from any brown vegetable or cereal grain or flour, for example wheat bran, oat fiber and sugar beet pulp. The color is removed to a slightly colored (including white) fibrous material usable in making edible food products. The bleached product is thoroughly washed and dried. The product is milled. The finer the grind size the lighter will be the color of the resulting product. (see columns 6-8)

Schmidt does not disclose the L value and the properties as in claims 24-27,35.

The product disclosed by Schmidt has a an off white to white color. Since the L value measure the whiteness of the product, the Schmidt product has at least the L value as claimed because the product is white. On column 18, the L value of the whitened yellow pea hulls is 92.09. As to the properties claimed, the Schmidt product is the same as claimed; thus, it is obvious that the product will have the same properties. The bleached bran product is used to make a variety of product; the amount of bran added depends on the product made and the level of fiber desired. Schmidt disclose the bleached product can be mixed with other flour and ingredients to make a variety of products. The selection of the kind of wheat or bran would have been an obvious matter of choice. The bleached product is thoroughly washed; thus, it is obviously that it is free of hydrogen peroxide. Since the product is the same as claimed, it is obvious the fiber content is the same as claimed.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Stanley discloses esterified dietary fiber products.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

April 5, 2002

LIEN TRAN
PRIMARY EXAMINER